

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.683 of 2019

In

Civil Writ Jurisdiction Case No.12365 of 2014

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1. The Indian Bank through CMD Represented through their constituted attorney, The Zonal Manager, Indian Bank, Zonal Office, Ist Floor, Govind Bhawan, Opp. N.P. Centre, Dak Bunglow Road, Patna- 800001.
 2. The Executive Director Cum Appellate Authority, Indian bank, Corporate Office Vigilance, Department, Post Box Nol. 5555, 254, 260, Avvai Shammugam Salai, Royapeeth, Chennai- 600014. Represented through their constituted attorney, The Zonal Manager, Indian Bank, Zonal Office, Ist Floor, Govind Bhawan, Opp. N.P. Centre, Dak Bunglow Road, Patna-800001.
 3. The General Manager, Disciplinary Authority, Indian Bank Corporate Office, Vigilance Department, Post Box No. 5555, 254, 260, Avvai Shammugam Salai, Royapeeth, Chennai- 600014, Represented through their constituted attorney, The Zonal Manager, Indian Bank, Zonal Office, Ist Floor, Govind Bhawan, Opp. N.P. Centre, Dak Bunglow Road, Patna-800001.

... .. Appellant/s

Versus

Kaushal Kishore Thakur S/o Late Brij Kishore Thakur, R/O Flat No. 302, Raj Kishori Apartment, Kavi Raman Path, P.S. - Buddha Colony, District- Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Dr. Binay Kumar Singh, Advocate
For the Respondent/s : Mr.Ashhar Mustafa, Advocate
Mr. Abu Nasar, Advocate

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 04-06-2020

The instant appeal has been preferred by the appellants against the judgment dated 26.04.2019 passed in CWJC No. 12365 of 2014 by the learned Single Judge whereby he was pleased to set aside the punishment awarded to the writ petitioner (respondent



herein) in a departmental proceeding, as being excessive and directed the appellate authority to substitute the punishment by a lesser punishment and also granted consequential benefits to the petitioner.

2. The relevant facts in brief are that at the relevant time when the respondent was posted as Branch Manager, Patna Main Branch and Circle Head of Indian Bank at Patna, a disciplinary proceeding was initiated against him. A charge sheet along with the statement of imputations of misconduct were served on him with letter dated 1.8.2010. The charges related to the period 12.9.2006 to 13.10.2009 when the respondent had functioned as Assistant General Manager/Branch Manager and Assistant General Manager/ Circle Head of the Bank at Patna. The charges in brief related to reckless financing in connection with thirteen loan accounts.

3. On conclusion of the enquiry concluded, the Inquiry Officer submitted an inquiry report on 6.5.2011. The disciplinary authority, considering the inquiry report, proposed to impose major punishment of compulsory retirement under Regulation 4 (h) of the Indian Bank Officer Employees' (Disciplinary and Appeal) Regulations, 1976 ('the Regulations' in short) and sought the opinion of the Central Vigilance Commission ('the Commission' in short). On the same by letter dated 18.8.2011 the Commission



advised to impose a suitable major penalty. In view of the opinion of the Commission, the opinion of the respondent was sought on the same. The respondent submitted his response by his representations dated 23.9.2011 and 21.10.2011. Thereafter, the disciplinary authority by its order dated 31.10.2011 imposed the major penalty of 'compulsory retirement' in terms of Regulation 4(h) of the Regulation. The appeal preferred by the respondent against the order of compulsory retirement was rejected by the Appellate Authority by the order dated 26.3.2012.

4. The respondent being aggrieved by the order dated 30.10.2011 compulsorily retiring him from service of the bank as also order dated 26.3.2012 rejecting his appeal against the said order of compulsory retirement, challenged the said two orders by filing CJWC no. 4148 of 2013 in this Court. This Court by its order dated 20.1.2014 was pleased to quash the order dated 23.6.2012 passed by the Appellate Authority and was further pleased to remand the matter back to the appellate authority to consider the case of the petitioner, afresh and to pass reasoned order on the materials available on record in the disciplinary proceeding. The Court further directed that the appellate authority while passing the order afresh must take into account the points raised by the petitioner in the said writ petition. For the sake of convenience the said two points



mentioned in the order dated 20.1.2016 of this Court is being quoted herein below :-

“(a) Whether the copies of the documents figuring in the list of documents relied upon by the bank while serving upon the petitioner the charge sheet were supplied to the petitioner or not as required under Regulation 6(3) of the Indian Bank Officer Employees’ (Disciplinary and Appeal) Regulations, 1976. If not, whether non supply of such documents would have caused any prejudice to the petitioner.”

“(b) the appellate authority shall specifically consider the petitioner’s plea that many of the questioned accounts had already been closed and that there has been substantial recovery in other accounts also and for subsisting liabilities also there are sufficient sureties to cover those advances. The appellate authority shall consider the statement of M.W. 1 in his order as he said to have stated that all the advances were adequately covered with collateral and prospect of recovery is good. The appellate authority will be required to test the conduct of the petitioner on the basis of material on record, with reference to Clauses 10.2.2, 10.2.4 and 10.2.7 of the Manual of Instructions of the Bank which deals with Staff Accountability (for officers).”

5. The order dated 20.1.2014 was brought to the notice of the appellate authority who once again considered the matter and by order dated 2.6.2014 dismissed the appeal of the respondent holding that there was no substance in the same and the case did not



warrant any intervention in the penalty of 'compulsory retirement' imposed on the respondent by the disciplinary authority.

6. The respondent thereafter filed CWJC no. 12365 of 2014 against the order dated 2.6.2014 of the appellate authority rejecting his appeal. He further prayed for setting aside the order dated 31.10.2011 whereby the bank had imposed major penalty of compulsory retirement on him and for a direction to the bank to reinstate him in service with consequential reliefs.

7. By judgment and order dated 26.4.2019 the learned Single Judge was pleased to allow the writ application (CWJC no. 12365 of 2014) by setting aside the order of punishment, on the ground of it being grossly excessive, disproportionate and not sustainable. Further the appellate authority was directed to substitute the punishment by a lesser punishment and to grant the respondent (writ petitioner) the consequential benefits of such toning down in the punishment. It is against this order dated 26.9.2019 of the learned Single Judge allowing the writ application (CWJC no. 12365 of 2014) to the above extent that the Bank has preferred the instant appeal.

8. Heard learned counsel for the appellant Bank and its authorities and learned counsel for the respondent (writ petitioner).

9. It has been submitted on behalf of learned counsel



appearing for the appellant bank that pursuant to the charge sheet dated 2.8.2010, a departmental proceeding was conducted against the respondent and after following the principles of natural justice and all procedures and after examining the evidence, the disciplinary authority passed a speaking order dated 31.10.2011 imposing the punishment of compulsory retirement. It was submitted that the charges involving serious lapses/misconduct on part of the respondent in not following the practice and procedures of the Bank were found to be proved by the inquiry officer and confirmed by the disciplinary authority. All this had led to loan accounts turning bad resulting in financial loss to the appellant bank. The appeal preferred by the respondent had been dismissed by the appellate authority by a speaking order dated 26.3.2012. The said order was quashed by this Court by order dated 20.1.2014 passed in CWJC No. 4148 of 2013. Pursuant to the direction contained in the Court's order dated 20.1.2014, the case of the respondent was revisited by the appellate authority who by its order dated 2.6.2014 rejected the said appeal. It was contended that the learned Single Judge by setting aside the order of punishment of compulsory retirement has gone beyond the scope of judicial review, altered the decision of the appellate authority ignoring the judgment dated 20.1.2014 passed in CWJC No. 4148 of 2013 and in derogation of



the materials on record and the facts as indicated in the order dated 2.6.2014. It was thus submitted that the order of the learned Single Judge being bad in law, be set aside.

10. On the other hand, it was submitted by learned counsel for the respondent that the impugned orders of compulsory retirement against the respondent (writ petitioner) were bad, illegal and fit to be quashed on the ground that contrary to the allegations of likelihood of loss, the bank's net profit rose from Rs. 1.5 crores to Rs. 4.5 crores during the respondent's posting at Patna Main Branch. The respondent was promoted in Scale V as AGM by the top management of the Bank and he was also awarded the coveted position of Zonal Manager, Patna. It was contended that the judgment dated 20.1.2014 passed in CWJC No. 4148 of 2013, quashing the order dated 26.3.2012 and remanding the matter back to the appellate authority to pass order afresh was not challenged by either party i.e. neither the respondent nor the appellant bank. Further contention on behalf of the respondent was that from order dated 26.4.2019 of the learned Single Judge it would transpire that in spite of specific remand to examine the issue that in his statement MW-1 (Management Witness) had stated that all the advances were adequately covered with collateral and prospect of recovery is good, the same was overlooked by the appellate authority. It was thus



submitted that the order dated 2.6.2014 of the appellate authority as also the order of punishment of compulsory retirement dated 31.10.2011, both impugned in the writ application were bad in law and fit to be set aside with all consequential benefits. It was submitted that there was no merit in the instant appeal of the bank and as such the same be dismissed.

11. It may be noted here that after conduct of the disciplinary proceedings, the appellant bank had passed the order dated 30.10.2011 imposing on the respondent the punishment of compulsory retirement from the bank. The appeal preferred by the respondent against the said order of punishment was rejected by the appellate authority by its order dated 26.3.2012. The respondent preferred CWJC No. 4148 of 2013 in this Court against both orders dated 30.10.2011 imposing punishment of compulsory retirement as also order dated 26.3.2012 rejecting his appeal. By judgment dated 20.1.2014 the learned Single Judge quashed the order dated 26.3.2012 passed by the appellate authority and remanded the matter back to the appellate authority to consider the case of the respondent afresh and to pass reasoned order on the basis of materials available on record of the disciplinary proceeding taking into account the points raised by the respondent in the writ application and which have been quoted herein above in paragraph no. 4. It would be



relevant to point out here that neither of the parties having preferred any appeal/application against the order dated 20.1.2014 passed in CWJC no. 4148 of 2013, the order of the learned Single Judge as contained therein attained finality.

12. Thus, the question that arises is as to whether the order dated 2.6.2014 passed by the appellate authority on the direction of this Court in its order dated 20.1.2014 in C.W.J.C. no. 4148 of 2013 is sustainable in law and on facts.

13. The two points raised by the writ petitioner and quoted and mentioned in the order dated 20.1.2014, which the appellate authority had to take into account were whether the copies of the document figuring in the list of documents relied upon by the bank while serving the charge sheet were supplied to the writ petitioner as required under the Regulation 6(3) of the Regulations and they were also required to test the conduct of the respondent in view of the statement of MW-6 as he is said to have stated that all the advances were adequately covered with collateral and prospect of recovery is good. Here itself it would be relevant to quote paragraph nos. 16 and 17 of the order dated 20.1.2014 passed in CWJC no. 4148 of 2013.

“16. This is also to be noted that the petitioner has taken a plea in paragraph 12 that the petitioner was not supplied with the copies of the documents cited in the articles of charge, along with charge-sheet in violation of Regulation 6(3) of the Indian Bank Officers



Employees“(Discipline and Appeal)
Regulations, 1976 which reads thus:-

“6. Procedure for imposing Major
penalties.....

.....”

“3. Where it is proposed to hold an inquiry, the Disciplinary Authority shall, frame definite and distinct charges on the basis of the allegations against the officer employee and the article of charge, together with a statement of the allegations, list of documents relied on along with copy of such documents and list of witnesses along with copy of statement of witnesses, if any, which they are based, shall be communicated in writing to the Officer employee, who shall be required to submit, within such time as may be specified by the Disciplinary Authority (for exceeding 15 days), or within such extended time as may be granted by the said Authority written statement of his defence. Provided that wherever it is not possible to furnish the copies of documents, Disciplinary Authority shall allow the Officer employee inspection of such documents within a time specified in this behalf.”

“17. This statement made in paragraph 12 of the writ application has also not been denied specifically in the counter affidavit. It has been contended that the plea of non-supply of documents has been taken by the petitioner all through, but this has not been considered by the appellate authority.”

It was for this reason that the appellate authority was directed to take into account the point with respect to service of the documents mentioned in the charge sheet in accordance with the Regulations and if not whether non-supply of such documents would have caused prejudice to the respondent.



14. The order dated 2.6.2014 of the appellate authority dealt with this point and observed that proviso to Regulation 6(3) provided that if copies of listed documents are not provided, the charged officer shall be allowed to inspect the documents within a specified time. It further observed that in the instant case the disciplinary authority initially allowed two days time to the respondent to inspect the documents at Patna Branch. As the respondent by his letter dated 21.8.2010 sought more time, as the time given was insufficient, the disciplinary authority by his letter dated 8.9.2010 permitted three more days for inspection of documents. It is stated by the appellate authority that the respondent availed the given opportunity of inspection of documents before submitting his reply in defence. It further transpires that after departmental enquiry was ordered, the inquiring authority by his letter dated 27.11.2010 again permitted the respondent to inspect the documents at Patna Bank and the respondent availed this opportunity also. In his order dated 2.6.2014 the appellate authority after observing the above facts also observes that all the documents listed in the charge sheet were produced by the Presenting Officer as part of management's documentary exhibits (Mex-6 to Mex-293) and copies of all these documents were supplied to the respondent at the outset of the Inquiry itself and that the respondent has not



presented the above facts to the High Court.

15. Firstly, with respect to presentation of fact relating to non-supply of documents to the High Court, it may be stated here that from reading of paragraph nos. 16 and 17 of the order dated 20.1.2014 quoted above, it would transpire that it was the bank who in its counter affidavit did not specifically deny the contention of the respondent made in paragraph no. 2 of the writ petition that he had not been supplied with the copies of the documents.

16. Further, the content of the order dated 2.6.2014 of the appellate authority wherein he stated that the documents listed in the charge sheet were supplied to the respondent at the outset of the inquiry itself and on the other hand he was given repeated opportunities to inspect the documents on three occasion appears to be contradictory.

17. From the contents of the order itself, it transpires that proviso to Regulation 6(3) provides that if copies of listed documents are not provided, the charged officer shall be allowed to inspect the documents. In the instant case if the documents had been supplied to the respondent at the very outset of the inquiry, there would be no reason as to why he was allowed to inspect the same, that too on three occasions. It appears that it is for this reason that the bank did not give a specific denial to the same in the counter



affidavit filed in CWJC no. 4148 of 2013 and even in the counter affidavit filed in CWJC no. 12365 of 2014 (from which the instant appeal arises), their reply is that the same has already been answered in paragraph no. 6 of the order dated 2.6.2014.

18. Thus, for the reasons given herein above as also in the order of the learned Single Judge, I come to the conclusion that the documents relied upon for framing of charge were not served on the respondent, causing prejudice to him in the proceeding.

19. The other aspect which the appellate authority had to take into account as per the order dated 20.1.2014 was that many of the questioned accounts had already been closed, there had been substantial recovery in other accounts and for the subsisting liabilities there were sufficient sureties to cover those advances. The appellate authority was further directed to consider the statement of MW-6 and they were also to test the conduct of the respondent on the basis of material on record with reference to manual of instructions of the bank dealing with staff accountability.

20. With respect to the second point it may be pointed out here that in the departmental proceeding the Chief Manager of the Patna Main Branch namely Mr. Kamal Nath Jha was examined as M.W 1 (Management Witness) in the inquiry proceeding. It would be relevant to refer to the order dated 31.10.2011 of the disciplinary



authority. From the record it would transpire that M.W 1 in course of his examination stated that all the advances were adequately covered with collaterals and the prospect of recovery was good. He stated about the availability of the machinery. Further in his cross-examination, M. W 1 stated that the machineries were available as verified by the branch officials. This statement of M. W 1 as also his statement in cross-examination has been referred to by the appellate authority and has been brushed aside observing that the deposition of M.W 1 is his opinion and not a statement of fact.

21. The appellate authority has further concluded that the acts of the respondent had resulted in huge financial loss to the bank to the tune of crores of rupees and as such he was of the view that there was no substance and it did not call for intervention in the penalty of compulsory retirement imposed by the disciplinary authority.

22. It would be relevant to refer to the conclusion in the order dated 31.10.2011 of the disciplinary authority wherein he concluded that 'the bank is likely to suffer a huge loss'. The use of the word 'likely to suffer' clearly shows that the loss had not been quantified and was still notional, as estimated by the disciplinary authority. The appellate authority while referring to the submissions made on behalf of the respondent has referred to various contentions including the statement of M.W 1, the successor Branch Manager



who deposed that all the advances are adequately covered and the prospects of recovery is good.

23. Further, the detailed contention raised by the respondent in the writ petition with respect to the four accounts pointed by the appellate authority and the explanation given by the writ petitioner were not answered by the bank in their counter affidavit. Without dealing with the averments made in the writ application, a vague and evasive reply was given in the counter affidavit stating that the writ petitioner was only attempting to shift the responsibility or loss on others. Further, no reply was given to the statement made in paragraph no. 31 of the writ application wherein he stated that he possessed the discretionary power to sanction loan upto Rupees 1.5 crores without any security, yet he exercised all caution to back each and every account with adequate collaterals. The reply to this, given by the bank was that he was trying to absolve himself of the acts of omission and commission.

24. From the facts stated above, especially the contents of the deposition of M.W 1 together with the conclusion of the disciplinary authority wherein he concludes about the likelihood of the bank suffering a loss, I am in agreement with the learned Single Judge that the conclusion arrived at by the appellate authority is based on presumptions and had the appellate authority examined



the issue in its right prospective, it would not have been left with any alternative than to tone down the punishment in terms of the reference of this Court in the earlier proceeding under Clause (d) wherein it was ordered that the appellate authority shall also consider as to whether in the facts and circumstances of the case, a punishment of compulsory retirement can be substituted by any other suitable punishment. I am in agreement with the order of the learned Single Judge setting aside the punishment as being excessive and directing the appellate authority to substitute the punishment by a lesser punishment and to grant the respondent (writ petitioner) the consequential benefits.

25. There being no merit in the instant appeal, the same is dismissed.

(Partha Sarthy, J)

Hemant Kumar I agree
Srivastava, J

(Hemant Kumar Srivastava, J)

Prakash/-

AFR/NAFR	
CAV DATE	28.11.2019
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